

STATE OF MICHIGAN
COURT OF APPEALS

BILTMORE WINEMAN, L.L.C.,

Petitioner-Appellant,

v

TOWNSHIP OF NORTHVILLE,

Respondent-Appellee.

UNPUBLISHED

January 24, 2003

No. 233901

Tax Tribunal

LC No. 00-275871

Before: Zahra, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Petitioner appeals of right from the Tax Tribunal's sua sponte order dismissing its case. We affirm.

Facts and Procedure

Petitioner acquired several parcels of property in Northville Township. The parcel at issue on this appeal ("the property") was conveyed to petitioner in a deed dated April 14, 1999, from the previous owner, Wayne County Economic Development Corporation ("EDC"). EDC owned the property pursuant to a Planned Unit Development Agreement ("PUD") between itself, respondent, and Wayne County.

Pursuant to statute, the property, when held by EDC, was tax exempt. MCL 125.1625. The parties agreed in the PUD that the property should be returned to respondent's tax rolls as soon as possible. The property would be returned to the tax rolls upon its sale to a developer. In the event that the property was not sold to a developer, it would be returned to the tax rolls on April 17, 1999, two years from the creation of the PUD.

The property's tax exempt status was removed at respondent's December 1999 board of review and taxes were assessed on the property for 1999. Petitioner did not receive notice from respondent that the property was going to be placed back on the tax rolls; notice was instead sent to EDC. On June 14, 2000, petitioner petitioned the Michigan Tax Tribunal ("the tribunal") for removal of the property from respondent's 1999 tax rolls. Petitioner also sought a refund of the taxes, which it paid under protest.

On June 21, 2000, the tribunal sua sponte dismissed petitioner's appeal. The tribunal ruled that under MCL 205.735, petitioner was required to file its appeal within thirty days of

receiving its tax bill in either July or December of 1999, thereby making petitioner's June 14, 2000, appeal untimely. On June 30, 2000, petitioner filed a motion for reconsideration with the tribunal. On March 30, 2001, the tribunal denied petitioner's motion because petitioner failed to follow the statutory requirements for invoking the tribunal's jurisdiction.

Analysis

On appeal, petitioner argues that the tribunal erroneously concluded it did not have jurisdiction over its appeal. We disagree. Appellate review of a decision of the Michigan Tax Tribunal is limited to whether the decision was authorized by law or whether the tribunal's factual findings were supported by competent, material and substantial evidence. *Pro Plaza, LLC v Detroit*, 250 Mich App 473, 474; 647 NW2d 529 (2002). Substantial evidence is that which a reasonable mind would accept as adequate to support a conclusion. *Black v DSS*, 195 Mich App 27, 30; 489 NW2d 493 (1992). Substantial evidence is more than a scintilla of evidence but may be less than a preponderance of the evidence. *Id.* Where there is sufficient evidence to support the tribunal's decision, this Court must not substitute its judgment for that of the tribunal even if this Court might have reached a different result. *Id.* In the absence of fraud, this Court's review of a Tax Tribunal's decision is limited to determine whether the tribunal committed an error of law or adopted a wrong legal principle. *Michigan Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 490; 618 NW2d 917 (2000).

Michigan's tax laws create procedural requirements a property owner must follow in order to invoke the tribunal's jurisdiction over the property owner's appeal. "For an assessment dispute as to the valuation of property or if an exemption is claimed, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute. . . ." MCL 205.735(1). In the present case, petitioner admits that it did not protest the placement of the property back on the tax rolls at respondent's December board of review. Petitioner argues, however, that it should be excused from this procedural hurdle because respondent failed to notify petitioner that the property was going to lose its tax exempt status. This Court has previously excused a taxpayer's failure to protest a tax assessment at the local board of review when the taxing authority failed to properly notify the taxpayer of the board of review's proposed action. *Parkview Memorial Ass'n v Livonia*, 183 Mich App 116; 454 NW2d 169 (1990). In *Parkview*, the petitioner failed to protest the removal of an exemption at the local board of review because it did not receive notice of the property tax assessment until after the board of review had already convened. *Id.* at 117-118. Because the petitioner did not receive notice of the assessment until after the board of review had already convened, this Court ordered the Tax Tribunal to assume jurisdiction over the petitioner's dispute. *Id.* at 121-122.

The facts in the present case stand in stark contrast to the facts in *Parkview*. In the present case, petitioner's failure to receive notice of the December board of review's proposed action was due to petitioner's failure to file a statutorily mandated property transfer affidavit upon the purchase of the property from EDC. MCL 211.27a(8) states that the transferee of property "shall notify the appropriate assessing office in the local unit of government in which the property is located of the transfer of ownership of the property within 45 days of the transfer of ownership. . . ." (Emphasis added.) Because petitioner failed to file such an affidavit, respondent did not know that petitioner was the true owner of the property and could not notify

petitioner that the property was losing its tax exempt status. Therefore, we hold that the tribunal did not err in dismissing petitioner's appeal.¹

Additionally, a property owner is required to file its petition with the tribunal challenging the assessing unit's action within thirty days of the determination that the property is no longer tax exempt. "[T]he jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 30 days after the final decision, ruling, determination, or order that the petitioner seeks to review" MCL 205.735(2). Petitioner failed to meet this procedural requirement because its petition was filed on June 14, 2000, more than thirty days after the property was placed on the tax rolls on December 14, 1999.

Petitioner argues, however, that the placement of the property on the tax rolls at the December board of review is not the "final decision, ruling, determination, or order" that it is appealing. MCL 205.735(2). Rather, petitioner argues that it is appealing respondent's May 16, 2000, letter informing it that the property was stripped of its tax exempt status at the December board of review. Petitioner offers no authority to support its contention that the letter, as opposed to the actual placement of the property on the tax rolls on December 14, 1999, is the final determination it is appealing. In any event, petitioner is not appealing the receipt of a letter detailing an action that had already taken place—petitioner is appealing the action itself. As a result, petitioner failed to meet the procedural requirement of filing its petition within thirty days of the adverse ruling or order.

Next, petitioner argues that it can challenge respondent's action at any time because respondent's act of placing the property on the tax rolls for 1999 was void. MCL 211.2(2) states: "The taxable status of persons and real property shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding." MCL 211.29(3) states: "The [tax] roll shall be reviewed according to the facts existing on the tax day. The board [of review] shall not add to the roll property not subject to taxation on the tax day, and the board shall not remove from the roll property subject to taxation on that day regardless of a change in the taxable status of the property since that day." Petitioner argues the act of taxing the property is void because EDC, a statutorily tax exempt entity, held title to the property on December 31, 1998.

Without deciding whether respondent's removal of the property's tax exempt status for 1999 was invalid, we conclude that because petitioner failed to properly invoke the tribunal's jurisdiction, the tribunal had an absolute duty to dismiss petitioner's appeal. The time requirements contained in MCL 750.735(2) are jurisdictional. *Electronic Data Systems Corp v Twp of Flint*, ___ Mich App ___, ___ NW2d ___ (Docket Nos. 225610, 225686, 225681, 225683, 225684, 225687, 225688, 225689, & 225690, issued October 25, 2002), slip op, p 3.

¹ Our holding is consistent with the Michigan Supreme Court's holding in *Chilton's Inc v Wilmington Apartment Co*, 365 Mich 242, 248; 112 NW2d 434 (1961). In *Chilton's*, the property owner failed to notify the local taxing authority that it owned a piece of property and was therefore not notified of an impending adverse action against the property. The Michigan Supreme Court held: "Failure on the part of plaintiff to put its deed on record and to have the property entered for taxation in its name subjected it to the hazards of the situation resulting therefrom." 365 Mich at 248.

Therefore, in the present case, the tribunal had an absolute duty to dismiss petitioner's appeal. Unlike the plaintiff in *Continental Motors Corp v Muskegon Twp*, 375 Mich 13; 133 NW2d 163 (1965), who only failed to protest at the board of review, plaintiff in this case also filed an untimely petition. The protest requirement is a "codification of the doctrine of exhaustion of remedies" and a procedural requirement for perfecting an appeal. *Parkview, supra*, 183 Mich App 121. On the other hand, the time requirements of MCL 750.735 are jurisdictional, and "no court or tribunal has the authority to waive or consent to jurisdiction when jurisdiction is lacking." *Parkview, supra*, 183 Mich App 121. Therefore, the tribunal had an absolute duty to dismiss petitioner's appeal due to its failure to timely file its petition. *Electronic Data Systems Corp, supra*, slip op, p 3.

Next, petitioner argues that the tribunal violated its rights to due process. We disagree. Due process protects owners of real property with respect to the assessment and collection of taxes. *Dow v State of Michigan*, 396 Mich 192, 203; 240 NW2d 450 (1976). Due process generally requires notice and an opportunity to be heard. *Id.* at 205. Petitioner was afforded an opportunity to be heard and to protest the removal of the property's tax exempt status. That opportunity was at respondent's December board of review. However, due to petitioner's failure to file a statutorily required property transfer affidavit, petitioner did not receive notice of the board of review's impending action.² We cannot conclude that constitutional due process protections are offended where the failure of the aggrieved party to fulfill a statutory duty is the reason that party did not receive notice of its opportunity to be heard. Therefore, the tribunal did not violate petitioner's due process rights by dismissing its appeal.

Petitioner also asserts that the tribunal's dismissal of its appeal violated petitioner's rights to equal protection under the law. Petitioner argues that because other taxpayers have been afforded a hearing in front of the tribunal despite a failure to meet procedural requirements, the tribunal violated petitioner's equal protection rights. We disagree.

The Equal Protection Clauses of the United States Constitution and the Michigan Constitution provide that no person shall be denied the equal protection of the laws. US Const, Am XIV; Const 1963, art 1, § 2; *Crego v Coleman*, 463 Mich 248, 258; 615 NW2d 218 (2000). An equal protection challenge is appropriate where the law at issue "treat[s] persons differently on account of certain, largely innate, characteristics that do not justify disparate treatment." *Crego, supra*, 463 Mich 258.

In the present case, petitioner makes no such challenge, i.e., petitioner does not assert that MCL 250.735 violates petitioner's equal protection rights. Petitioner asserts that, because another taxpayer was allowed to proceed with an appeal despite its failure to protest the board of review, equal protection would be violated if petitioner is not afforded the same opportunity. This argument is not appropriate for an equal protection analysis. Petitioner does not assert that MCL 250.735 created different classes of people based on some irrational characteristic. In

² In addition, petitioner was twice given the opportunity to be heard by the Tax Tribunal, but because it failed to follow statutory hurdles for invoking the tribunal's jurisdiction, the appeal was dismissed.

other words, because petitioner does not come forth challenging any specific classification in a statute, petitioner's equal protection argument is misplaced.

Lastly, petitioner claims that the tribunal adopted an incorrect standard of review when denying its motion for reconsideration. Again, we disagree. The order denying petitioner's motion for reconsideration states: "Petitioner failed to demonstrate any palpable error by which the Tribunal and the parties were misled in the rendering of the Order [dismissing petitioner's appeal]. . . ." Petitioner argues that it did not need to demonstrate "palpable error" in its motion and that the tribunal failed to consider its motion under the tax tribunal's good cause standard. 1999, AC Rule 205.1348.

Rule 205.1348 states that the tribunal may grant a party's motion for reconsideration upon a showing of good cause. 1999, AC Rule 205.1348. Under the rule, good cause is defined as an error of law, a mistake of fact, fraud, or "any other reason the tribunal deems sufficient and material." 1999, AC Rule 205.1348(4). After examining the order denying petitioner's motion for reconsideration, we conclude that the tribunal did not adopt a wrong principle. The tribunal's language, that petitioner failed to demonstrate "palpable error," follows the tribunal's lengthy summary of the parties' arguments, the tribunal's factual findings, and the tribunal's conclusions of law. By stating that petitioner failed to demonstrate "palpable error," the tribunal was stating that petitioner failed to show an error of law or a mistake of fact. As such, we hold that the tribunal did not err in denying petitioner's motion for reconsideration.

Affirmed.

/s/ Brian K. Zahra
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood